

STUDIES IN JUSTICE, PEACE AND FREEDOM / 1

†
conscience,
WAR,
and the
selective
objector

by RICHARD J. NIEBANCK

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FOREWORD

The present time of radical change and dislocation is at once new and not so new. Its newness or discontinuity from the past is seen in the rapidity of developments in both material technology and social relations, a rapidity which is not inappropriately described as explosive. Its continuity with the past, on the other hand, consists in the fact that the basic human problems—greed, self-aggrandizing power, violent oppression, to name a few—are essentially the same as ever, though writ much larger. The ancient choices between freedom and tyranny, civil order and chaos, justice and arbitrariness, are still before us as they always have been. Yet the tremendous forces released by explosive change appear increasingly to be of an inexorable character, making all efforts toward the achievement of fuller humanity, justice, and peace into exercises in futility.

It has become a truism that the human family is today confronted by two distinct but related “revolutions.” One is the “technological revolution” in the so-called developed nations; the other is the “revolution of rising expectations” in the less developed “Third World,” as well as in the many pockets of disadvantage in the developed nations. While at first glance it may appear that the particular problems inherent in one revolution are unrelated to those inherent in the other, it soon becomes clear that the two revolutions are intimately tied together. To cite only the most obvious relationship: the “rising expectations” of the less developed world have increased in direct proportion to the “rising

potentialities" of an expanding technology in more developed countries.

Can the human race survive the testing to which these two revolutions will subject it? Can man's ethical sensibilities and his basic compassion be expanded to keep pace with the expanding frontiers of his knowledge and manipulative skill? Will technology serve or destroy man's humanity?

Can the inevitable hostility released by the "revolution of rising expectations" be met with increased opportunity for human fulfillment, or will the human family, like Dives and Lazarus, become permanently divided by an unbridgeable gulf? Will the developed world declare a war on poverty or on the poor?

And what, amid the march of so many super-personal forces, will become of the single individual, the person created in the divine image for divine fellowship?

A prominent diplomat recently observed that if the world is ruled by fools and folly, the destruction of man in our time, though it come as a shock, will not come as a surprise. This thought, which might well have been voiced by Martin Luther, suggests that a "common sense" approach to human problems, so characteristic of Luther's social and political thought, is as needed today as it was in the sixteenth century. Often labeled a thoroughgoing pessimist, Luther was in fact a moral realist who throughout his lifetime sought to enlighten the "fools" and lessen the "folly" which seemed to rule his world. Aware though he was of man's demonic possibilities, Luther believed strongly in what might be termed the civil educability of man, the human capacity for political prudence, and man's innate sense of the just and fit.

Man today is as prone to throw his common sense to the winds and to become enthralled by quasi-religious ideologies and false *eschata* as he was when the "Enthusiasts" were abroad in Luther's Germany. The difference is that, with his new-found power, man's crusade-of-the-moment can quickly

become the final dance of death for the entire race. With such a prospect facing him, man is in need, not of a new mystique, ideology, or crusade, but of the rationality-tempered-by-realism which Luther urged upon the political leaders of his day.

It is to the discovery and application of such a rationality that this present series, "Studies in Justice, Peace, and Freedom," is dedicated. These booklets are intended to assist the church and its members more clearly to see and evaluate the present world in its myriad of aspects and, hopefully, the more effectively to participate in the political task of preserving that world for the sake of man.

Conscience, War, and the Selective Objector, while occasioned by the prominence of issues related to the war in Vietnam, is intended to have a much wider and long-term relevance. The moral dilemmas surrounding war and participation in it will not vanish—indeed, they may become much more acute—after the agony in Vietnam has subsided. So long as the world remains an armed camp, so long as "peace" means "balance of terror," so long as hostility between the world's rich and its poor remains the exposed detonation wire of general holocaust, the problem of war and participation in it will have to be faced by all morally-sensitive men, Christian and non-Christian alike.

The arguments set forth in the present booklet rest upon the essentially selective character of Lutheran political ethics. Lutheran ethics is rightly characterized as non-ideological and non-legalistic. It begins not with a body of eternal principles or Dominical injunctions but rather in the confrontation of the impulse of neighbor-love with the ambiguities of historical existence. Ethical decision is made amid the competing demands of justice, order, freedom, and peace. It includes an acknowledgement of the destructive elements involved in every moral choice, and, therefore, the risk-of-faith character of such choice. In such a context, selec-

tive participation or nonparticipation in particular wars is to be seen by Lutherans as a normative, not a borderline, stance.

The Board of Social Ministry offers this booklet to the church and the larger community as its contribution to the ongoing discussion of the issues of war and military participation. While it is hoped that this contribution may be toward a sharpening of the issues, there is no intention of providing a final definition of them.

The author of the present booklet is a member of the elected staff of the Board of Social Ministry. He holds the position of Secretary for Study in Social Concerns.

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INTRODUCTION

The place of the individual *vis-a-vis* collective society and its ordering structure, civil government, has been a central theme in the history of Western civilization. Indeed, from one vantage point, that history might be characterized as the continuous struggle to define and to secure the rights of the human person in society. "Freedom of conscience" has become the catch-phrase about which has clustered a constellation of issues related to the worth, dignity, and liberty of the individual.

The task of defining and guaranteeing "freedom of conscience" becomes an increasingly urgent one in the present age of burgeoning collectivism and "technocracy." What will be the fate of the sensitive, independent conscience in a time when conformity and "groupthink" are increasingly necessary for efficient corporate operation, whether private or public? To what degree will society be able to tolerate the seemingly disruptive effects of conscientious dissent? In an age when knowledge is becoming more and more specialized (and when much of that specialized knowledge is "classified," and off limits to the general public), what hope has the morally sensitive person of being able to make a judgment that is correctly informed?

Other questions raise themselves with an urgency that is equally compelling: How capable is conscience of self-deception? How may conscientious dissent be kept from becoming an empty rite of self-purification or a gesture of romantic moralism? When ought conscientious scruples (and when ought they not) be subjected to the corrective qualifiers of

political prudence? To what extent should the "religious" conscience rely upon the collective insight of the believing fellowship?

The issue of conscience, its obligations and rights, has been raised with particular poignancy in the United States by the present conflict in Vietnam. Selective conscientious objection (conscientious objection to particular, rather than to all, wars) has been in the news for many months and shows little sign of waning. Indeed, it is doubtless true that the controversy surrounding the Vietnam war is having an indelible effect upon ethical discussion. No future consideration of the issues will take place without some reference to the present agony.

Discussion of the obligation of Christian conscience in the face of a military commitment which, both morally and politically, is of questionable validity has not been wanting in Lutheran circles. This discussion is reflected, though minimally, in the statement on Vietnam adopted by the Third Biennial Convention of the Lutheran Church in America in 1966. In it the church called upon its congregations and members "to be especially mindful of the spiritual and moral problems of men called to military service, including those who on grounds of conscience feel that they cannot participate in war."

In a considerably more explicit statement, the Council of the Lutheran Student Association of America called upon the Lutheran church bodies in the United States to support the stand taken by those of their members who "conscientiously object to specific wars." It went on to appeal to the President and Congress "to make provision within the Selective Service System for alternative service" for such selective objectors. Finally, the statement pledged support to "individuals who find it necessary to break the law in honoring their conscience concerning military service."

The idea of conscience has been part of that nexus of vital

concepts which have constituted the "quick" of Western civilization ever since its dawning. Passively, conscience stands for the sacredness of the individual person; actively, it refers to the moral responsibility which is central to distinctively human life. Whether it is considered as a spark of the divine (as in Stoicism), a function of human rationality capable of apprehending moral principles (Aristotle and Aquinas), the "categorical imperative" (Kant), or the divine law written upon the hearts of men (Paul), the idea of conscience stands as a bulwark against all forms of dehumanizing tyranny. Today it can be a resource of first importance to all who would resist enthrallment to the corporation or the technocratic state.

A contemporary appreciation of conscience, essential though it is, dare not, however, be undertaken in an uncritical fashion. Christians, if they are true to the realism that is their biblical legacy, should be the first to see and point out that conscience can as easily be the agent of sin as of God, as easily a barrier to truth as a window through which it comes. A self-justifying conscience can simply confirm a person's wrong moral choice; and such a conscience is most demonic because it masquerades beneath the names of "ought" and "moral duty."

It is not difficult to see, therefore, how conscience, like other concepts of vital significance, can be exalted out of all proportion so as to become a slogan susceptible to diabolic exploitation. Christians must indeed be champions of conscience, but they must do their championing in such a way that conscience does not become falsely abstracted from either the total person or from the community of which the person is a part. Conscience is a relative phenomenon: it is shaped by all the forces which operate within and upon the person, and it is at all times subject to perversion, whether gross or subtle. Conscience is to be nurtured and protected, but it is not to be deified. At a time when many men are

grasping at the idea of conscience in the hope that it will save them from computerized depersonalization, Christians are called to be both compassionate and critical, to restore the kind of perspective that will render the concept of conscience a help and not a cruel mirage.

Largely as a result of the conflict in Vietnam, the problem of conscience is today being focused on the issue of the "just war." What right, it is asked, has a citizen to refuse military conscription on grounds other than those of a religious pacifism which objects to all wars? What right has government, on the other hand, to decree that persons holding a pacifist position as an article of faith may be exempt from military service, while others who may object to a particular conflict on the basis of religious scruples, may not be so exempt? Why, too, should the person who identifies his objection as "religious" enjoy treatment not accorded to one who does not adhere to a religious tradition of any kind?

What right has an individual to judge the merits of a particular war and, on the basis of that judgment, to refuse induction into the military? On the other hand, is the individual responsible for (or indeed capable of) judging the merits of a specific war?

It is no understatement to say that Lutheranism in America has provided very little guidance to its adherents on the issues of conscience and warfare. Largely content to reiterate the Pauline injunctions of Romans 13, they have fostered a climate in which the person with conscientious doubts was a maverick to be viewed with suspicion. The tradition of the "just war" theory, as presented by Augustine and echoed by Luther, was, as far as religious education at the "grass roots" is concerned, all but forgotten. Conscientious objectors did not have much sympathy among persons whose religion included a good dose of patriotism.

It is toward the correction of this situation that the present booklet is offered. The issue of conscience and war, urgent as

it is at this time, will doubtless be current for an indefinite period to come. The responsible use of military power in an anarchic world, the place of revolutionary violence in the achievement of social progress, the ever-present threat of thermonuclear warfare—these and other concerns will give the question of the just (or, better, justified) war a continuing relevance after the present crisis has passed.

It is therefore the intention of this booklet to provide some preliminary guidances to the American churches of the Lutheran tradition as they seek, in the light of their theological heritage, to come to terms with the problem of conscience and war. It attempts to pose and answer in a provisional way the following questions:

1. What is conscience?
2. What is the peculiar relationship between the conscience of the Christian and the life of the believing community? What mutual obligations are implied in this relationship?
3. Is the theory of the "just war" a valid basis for conscientious objection to participation in warfare? Should government recognize such objection as a valid basis for exemption from military service?
4. In the light of the above, what practical steps ought the church to take (internally) as it ministers to its members who conscientiously dissent from their nation's military policy and (externally) as it evaluates the manner in which the government deals with such dissenters?

It is hoped that this discussion will be helpful both to the church in its work of Christian education as well as to the individual who is confronted by the prospect of military service.

conscience, **WAR**, and the selective objector

by RICHARD J. NIEBANCK

I. THE NATURE OF CONSCIENCE

Ever since the dawn of history man has mused, speculated and agonized over a peculiar feature of his inner nature, a feature which seemed to differentiate him from all other forms of life. For man is never quite alone. There is within him an unseen witness of all that he does; and the warning, disapproval, or approval of that witness reminds him that even the most private of his actions is never completely so. This witness at one moment stands over against the self to accuse or excuse; at the next it seems that the witness becomes the person's own "best" or "higher" self. The dual identity of this witness is dramatized by the Apostle Paul in the seventh chapter of Romans: First he is afflicted by the inward accusation of the law which causes him to see himself as condemned. "I . . . am sold under sin." (v. 14) But then he identifies himself as standing off and transcending the situation of slavery to sin. "It is no longer I that do it, but sin which dwells within me." (v. 17)

Paul's statement of his experience of inner contradiction has become a classic statement of the agony of all morally sensitive men: "For I do not do the good I want, but the evil I do not want is what I do . . . So I find it to be a law that when I want to do right, evil lies close at hand. For I delight in the law of God *in my inmost self*, but I see in my members another law at war with the law of my mind and making me captive to the law of sin which dwells in my members."

This "inmost self" which Paul describes as the dwelling-place of the law of God is what has commonly been referred to as conscience. Popularly defined, conscience is "the

natural recognition of right and wrong as regards one's actions and motives; the faculty which decides upon the moral quality of one's actions and motives, enjoining one to conform with the moral law.¹ Thus defined, conscience is both a function of the human person (*to have conscience* about a certain thing) and a characteristically human capacity (the *ability* or *faculty* called "conscience"). Conscience is that sense of moral answerability associated with the essence of human-ness which acts now as accuser and judge, now as monitor, now as defending advocate against accusations from without.

The idea of conscience has traditionally held a place of prominence in Western secular thought. Within the history of those ideas which fall roughly under the rubric of "liberal democratic," conscience is generally identified with the seat of personal integrity, the *Sanctum Sanctorum* which no external authority is permitted to transgress. It is the final moral arbiter which a man violates at his peril even though following its prompting may mean imprisonment or even death. It is the sense of "ought," the undeniable claim from within which stands in sharp contrast to the "must," the claim from without.

The dramatic heroine of conscience thus conceived is Sophocles' Antigone. Refusing to obey the royal edict that her brother, Polynices, should go unburied because he had fought against Thebes, she performs the rite of burial, incurring punishment by death. Although there has been some controversy over the proper interpretation of her character, Antigone has been a dramatic paradigm for those who affirm the possibility of a "pure" act of conscientious defiance of authority. Antigone is seen as completely captive to the demand of the higher law which, without taint of pride, she must fulfill.

¹The American College Dictionary (New York, Random House, 1958), p. 257.

So understood, conscience is not merely the moral functioning of the intellect; it is rather the seat of those ultimate loyalties and values upon which personal integrity is grounded. Its violation is an act of spiritual suicide. It is the keystone whose removal causes the arch to fall.

The Theology of Conscience: Critical Appreciation

The historic Christian understanding of conscience is essentially dialectical in character. On the one hand, it is appreciative of conscience as the inviolable seat of personal integrity. On the other hand, it asserts the impossibility of a "pure" act of conscience unmixed with elements of pride and destructiveness. To those overly simplistic views which assert in effect that "the voice of conscience is the voice of God," Christian theology brings three important qualifiers.

The first two of these derive from the contribution made to theology by psychology and sociology; the third is more purely theological in character. Together they contribute to a fuller and more dynamic view of conscience which takes into account those ambiguities which a realistic view of man can scarcely avoid.

The Psychological Qualifier

In simplest terms, the psychological qualifier states that the human person is not a combination of clearly delineated faculties; rather, he is a highly complex, many-faceted organism in which every function is related to every other one in innumerable ways. On such a view it is impossible to speak of "mind" as being separate and distinct from "body," or of "intellect" as being separate and distinct from "will" and "appetite." Man's psychosomatic and unitary character (which was taken for granted in biblical thought long before present day psychology rescued it from the artificial compartmentalization of an essentially Greek rationalism) makes

it impossible to posit within the self any element which is separate from or uninfluenced by the other elements. When a man thinks, he thinks as a whole being, not as "mind;" he wills as a whole being; he acts as a whole being.

There is, therefore, no such thing in man as purely objective perception or purely rational observation. Human perception and reasoning are influenced by the needs of the perceiving organism in terms of which data are organized and interpreted. While there are, to be sure, degrees of rationality and degrees of objectivity, no operation of perception or judgment is quite free of the many subtle influences which give shape and character to the individual's response.

This simple and altogether too obvious point is made in order to show that, whatever it may be conceived to be, conscience can in no sense be held as a separate, "pure" function (such as a purely "rational" faculty which needs only to be rightly "informed") to be exalted and relied upon as an infallible guide to moral action. In extreme situations, conscience can as easily be the means of making respectable an irrational action as it can be an influence of rationality in moral decision-making.

The practical result of this insight ought not be a depreciation of conscience. The fact that conscience is to a degree expressive of the needs of the total human organism does not render it any the less inviolable. What the insight does, however, is to remind the mature individual that his conscience is not objective and surely not infallible. Knowing how strongly his own needs may shape his moral choice, such a person will seek to keep himself open to the possibility of correction from without.

The Sociological Qualifier

As it is impossible to abstract conscience from the total person, so it is equally impossible to abstract man or his con-

science from the larger environment. A man's interests, values, and loyalties are derived largely from the group or groups to which he belongs. Even the nonconformist or rebel acts out his nonconformity in terms of the setting against which he reacts. Furthermore, the person who chooses to defy the norms of his national or ethnic community quite often derives support from another community (sometimes a more inclusive one) to which he gives primary allegiance.

Far from being an autonomous function of the solitary individual, conscience, therefore, is very much a social phenomenon which is informed and reinforced by a social setting. Like the person himself, conscience derives its identity from the society and culture with which it identifies or against which it reacts.

Reinhold Niebuhr cites the case of the military caste in Nazi Germany as an illustration of how powerful a hold the traditions of a social group can have upon the individual. Because of their unswerving adherence to "duty" and a traditional loyalty to the state which could in no case be disavowed, the German military elite were used and, in the end, destroyed by the Hitler regime. The near-sacred traditions of the military, and the apparent absence of a countervailing claim upon conscience, rendered the officers tragically impotent before one who made them into now ludicrous, now tragic puppets.²

As noted previously, these considerations are touched upon here not in any attempt to depreciate conscience but rather to encourage a more realistic appreciation of it. It seems clear that blind devotion to an ideal, without any awareness of its psychic or social sources, can result in (at least) meaningless moral gesturing and (at most) the callous use of the person of conscience by demonic forces of which he is naively unaware.

²Reinhold Niebuhr. *The Self and the Drama of History*, pp. 15-16.

On the other hand, the positive recognition of the socially-informed and socially-reinforced nature of conscience can lead to more effective and meaningful action. The church has long considered itself to be the guardian and guide of Christian conscience. In more theological terms, it is the fellowship which forms the context of the enlightening work of the Holy Spirit. Within the historic *koinonia* the individual, together with his fellow-Christians gathered about the Word and Sacraments, may acquire (ideally, at least) the perception and understanding which will enable his actions to be of significance and not simply empty pose-striking.

The point that must be strongly made here is that, if such an ideal is to be realized, the church will have to make a much greater effort at being that kind of fellowship in which the morally sensitive person can in fact receive support and guidance commensurate with the degree of his sensitivity. All too often the churches of middle-class America have been just the opposite. Such "informing of conscience" as they have done has been, at the least, so wooden and, at the most, so authoritarian that the morally sensitive person has been driven away, particularly if his opinions in any way clash with the prevailing ethos.

The Lutheran Church in America made a small beginning at speaking on the issue of the Christian conscience as it is related to the believing fellowship when, in the context of its 1964 Statement on Race Relations, it addressed the issue of civil disobedience. The church said:

If and when the means of legal recourse have been exhausted or are demonstrably inadequate, Christians may then choose to serve the cause of racial justice by disobeying a law that clearly involves the violation of their obligations as Christians, so long as they are:

- a. willing to accept the penalty for their actions;
- b. willing to limit and direct their protest as precisely as possible against a specific grievance or injustice;

- c. willing to carry out their protest in a nonviolent, responsible manner, after earnestly seeking the counsel of fellow Christians and the will of God in prayer.

In all of this, we are guided and supported by the normative teaching of the church in Article XVI of the Augsburg Confession: Christians are obliged to be subject to civil authority and obey its commands and laws in all that can be done without sin. But when commands of the civil authority cannot be obeyed without sin, we must obey God rather than men. (Acts 5:29)³

This statement approaches the ideal just described in that (1) it represents the considered judgment of one segment of the Christian community on what ought to characterize an act of civil disobedience (willingness "to accept the penalty" and "to limit and direct their protest as precisely as possible" as well as to be nonviolent); (2) it represents an effort to ground a judgment in the historic testimony of the church (reference to the Augsburg Confession); and (3) it recognizes that guidance for responsible decision must be sought within the context of the believing community ("after earnestly seeking the counsel of fellow Christians and the will of God in prayer").

While this theme will be taken up again at a later point, it is raised here in order to illustrate that Christian theology cannot be seen as celebrating the solitary and autonomous conscience. Theology recognizes and places positive value upon the fact that conscience is a function of the whole person as he acts within a social context.

The Theological Qualifier

Before stating the nature of the theological qualifier, it is perhaps advisable to explicate in a somewhat fuller fashion the positive side of the Christian understanding of con-

³Social Statement of the Lutheran Church in America. Race Relations. Adopted by the Second Biennial Convention, July 2-9, 1964.

science. The positive appreciation which theology brings to the idea of conscience is seen in (1) the high valuation placed by theology upon human personhood and (2) the theological assertion that man is a moral creature, possessing both a sense of "ought" and the capacity for discerning the requirements of justice. These assertions regarding man's value and moral capacity rest upon the basic understanding of man as a being constituted by his relationship of answerability—responsibility—to the God who has called and continues to call him into being.

It is only after these positive assertions have been taken with utter seriousness that what is here termed the "theological qualifier" can have any meaning. That qualifier is in the counter-assertion that man's entire person, including his conscience, is estranged and sinful, that the "yes" concerning man's moral capacity must be accompanied by the "no" concerning original sin.

There has at times been a tendency within theology to neglect this "no". It is illustrated in (1) an inclination within the tradition of Aquinas and the Scholastics to consider reason, and therefore conscience, as unaffected by the fall and (2) the optimism of nineteenth century Protestantism about the possibility of redeeming man and society through moral education. This tendency was answered in the first instance by the "no" of the Reformation and in the second by the "no" of Karl Barth and neo-orthodoxy. The content of that answer is summed up in the extreme assertion that conscience, far from being a sign of man's capacity for good, is in fact a sign of his condition of estrangement.

Conscience, on this view, is the inner cry of man for unity with himself and with God. The conscience of "natural man" is forever attempting to recapture that unity. It is meticulous, prone to rites of purgation, painfully and unceasingly searching for the pure ethical act. *Conscience is man trying to justify himself.*

By nature conscience cannot live with guilt. On the one hand, conscience strives with it, attempts to atone for it by increased efforts at moral virtue; on the other hand, conscience denies it, building a defense of intricately refined rationalization for actions whose impurity it cannot face. Conscience is at once the exposed nerve of the human spirit which a man tortures in orgies of masochistic self-recrimination, and the blindfold of self-righteousness behind which a man shields himself against the moral daylight. Conscience can either destroy a person or freeze him into the worst sort of Pharisee.

Because of its devotion to the cold "moral principle" or "duty," conscience becomes rigid and impotent before the forces which operate in history. It is incapable of seeing that it can be used easily by the demonic forces of the world, as in the case of the German military elite under Hitler. It is unable to "sin boldly" because it has no faith and, therefore, no love. It is powerless to tell the would-be murderer a "robust lie" about the whereabouts of his intended victim. As Dietrich Bonhoeffer has said, "The man of duty will end up by having to fulfill his obligation even to the devil."⁴

The evidences of "conscientious self-justification" are to be found everywhere. Men, corporations and nations spend enormous amounts of energy in explaining the social utility or moral rightness of their policies and actions. The ready indignation with which they react to any questioning of their motives is but another sign of the deadly seriousness with which they work at justifying their behavior.

It would be improper, however, to leave the impression that the Reformers and their latter-day interpreters are thoroughgoing pessimists about conscience. Alongside the negative assertions about the sinfulness of conscience there are positive ones about the role of conscience as a means for

⁴Dietrich Bonhoeffer. *Ethics*, p. 5.

achieving "civil righteousness." However sinful and prone to self-deception it doubtless is, conscience is nonetheless the mark of common humanity, the basis upon which believers and non-believers can cooperate in searching for the rough-and-ready justice which makes human society liveable. Man is indeed constantly deceiving himself about his goodness, but, for all that, he does not lose that rudimentary sense of justice which drives him forward, haltingly to be sure, in the political task of achieving human rights and expanding human opportunities. The Christian affirms all this, however, at the same time as he holds fast to the realism derived from his particular understanding of man's nature.

In summary, Christian theology understands conscience as being both inviolable and ambiguous. Its inviolability rests upon the inviolability of human personhood. Its ambiguity derives from the fact that conscience is a relative phenomenon which is influenced by both the needs of the person and the values of society. This ambiguity is deepened by the fact of man's estrangement from God, other men, and himself.

The erring conscience is no less inviolable than the conscience that is "rightly informed;" but it is better for ethically responsible persons to be aware of the ambiguity which resides in conscience. Not to be so aware is to invite cynical manipulation of the politically innocent by the politically shrewd, or the utter irrelevance of moral solipsism.

The Theonomous Conscience

Where more traditional theology spoke of "natural" versus "redeemed" existence, contemporary theology is more likely to speak of life as either "inauthentic" or "authentic." In his "natural" or "inauthentic" state—a state of estrangement from God, himself, and other men—the person, and therefore

his conscience, is depicted as being either "heteronomous"—subservient to powers or systems outside himself—or "autonomous"—falsely self-sufficient. In contrast to these stands "authentic" or "theonomous" existence.

Lutheran theology understands "natural" or "inauthentic" conscience as being in bondage to itself and the demands of "the law," "principle," and "duty." Theonomous conscience, on the other hand, is free and able, because of the forgiveness of sins, to live with itself. This is not to say that theonomous conscience has "made peace" with evil or that it has grown complacent on the bounty of "cheap grace." It is rather to say that such conscience no longer is driven frantically to purge itself of guilt or to seek the comfort provided by endless rationalization and casuistic hairsplitting. Theonomous conscience is free to ask, "What is my neighbor's need, and how is it to be served?," because it is free of the compulsion to ask, "What is purity and how is it to be attained?"

These assertions are not meant to obscure the continuance of "natural" or "unregenerate" conscience in the believer. As the man in Christ is at once *iustus et peccator*, so likewise is the function of conscience. In the Christian, "natural" conscience is ever reasserting itself, calling into question the efficacy of divine grace, and drawing the person's attention away from the neighbor and back to himself. Yet, insofar as he is a Christian, the believer is empowered to win the battle over the masochistic "natural" conscience and to respond freely to whatever the moment may demand.

As was noted earlier, from the viewpoint of both biblical thought and present-day psychology, conscience is to be understood as the whole self—within and inseparable from its social/cultural environment—functioning in a particular way. This being so, the Christian's conscience is properly the redeemed self, the new man in Christ, within and inseparable from the *koinonia* functioning in a particular way: reflecting upon past actions and future choices in order to answer the

question, "What is right action?" "Right action" is here understood with reference to the demands of neighbor-love.

Christian theology sees theonomous conscience as operating within the context of the believing fellowship and by the power of the Holy Spirit (Rom. 9:1). It is the Christian fellowship which guards (I Cor. 8:7ff) and nurtures (Heb. 5:14) the conscience of its individual members. The believer relies upon the insights which are provided by the fellowship—by both his contemporaries and his fathers in the faith.

Reliance upon the Holy Spirit and the informing/supportive activity of the believing fellowship does not mean, however, that Christian conscience is afforded unambiguous and ready answers to ethical questions. Christians will most likely have varying and, indeed, conflicting judgments on particular questions, and the historic witness of the community will itself contain conflicting strains. Absolute certainty is something unavailable to man within or without the fellowship of believers. The situation of finite freedom is not removed, for if it were, man's humanity would be removed as well.

What then does the fellowship afford to the individual conscience?

In the first place, the "mutual consolation of brethren" (which might be termed an unofficial third sacrament within the Lutheran tradition) affords the individual the assurance of forgiveness, an assurance which permits him to act without the debilitating concern for his own purity. Ethical action which springs from such assurance is free from the stridency which often accompanies certain kinds of protest activity. Because of his confidence (by no means to be identified with either absolute certainty or complacency) the Christian is less interested in the visibility of his action and more interested in its meaning and effectiveness. Not being a moral

purist, he is able to act politically for the realization of attainable goals. On the other hand, when extreme circumstances call for open and visible confrontation, the Christian takes his stand in a style of ready ease and lack of self-concern.

An equally important benefit afforded by the Christian fellowship is the corrective effect of a multiplicity of ethical/political viewpoints. The presence of honest disagreement among brethren can have a number of salutary results: (1) It guards against the kind of arrogance which asserts a particular position to be the one favored by God; (2) it requires the advocates of a given viewpoint constantly to re-examine and sharpen their stand, and to modify it where it is shown to lack authenticity; and (3) it guards against the kind of meaningless and self-consuming gesturing which often characterizes individuals and groups who have become isolated from a more inclusive community.

In an article on civil disobedience, John C. Bennett speaks clearly to this issue. He writes:

... at times the distinctive truth in Christ can bring the false claims that God is on our side, whatever our side is, under judgment. Some protection is afforded by membership in the larger church, which includes many people of different experiences (who may be as much tempted to claim God for their side as we are to claim him for our side). And yet this very conflict of claims may force us to think beyond what is taken for granted in our nation and enable us to see our nation as it appears to others.⁵

As has been noted, the context of Christian fellowship, while it may make for more significant action, does not take away the risk of decision. There is no guarantee that a situation will not arise when a person's stand might be in conflict

⁵John C. Bennett, "The Peace of Civil Disobedience," *Christianity and Crisis*, December 25, 1967.

with the that taken by many and, perhaps, most of his fellow-Christians. In such a situation, responsibility cuts both ways: If the individual is obligated to take seriously the varied witness of the believing fellowship, the fellowship on its part is obligated to respect the individual's position, however unpopular, and to look for whatever word of judgment God may be speaking through it. Again Bennett:

But ultimately—after we have listened to the others—it is a personal decision. There is no short cut to absolute security. We have to take risks. If we find ourselves on the way to civil disobedience on issues of great fatefulness, when the possibilities of choice are few indeed, we may well be traveling a much trodden Christian road. Those who take it should have the blessing of the churches to which they belong and of the whole church.

It is more than obvious that the church has too often not been the kind of fellowship which embodies the functions just described. A shallow moralism has frequently stood where the freedom of the gospel should have been. Instead of mutual consolation there has been mutual censure; free discussion has been inhibited; and the risk-taking necessary for genuine ethical choice has been all but missing. Instead of theonomy, the situation has been one of heteronomy. Yet the means for reversing this situation is ever at hand in the gospel itself. There is still hope for the kind of renewal which will enable the Christian community to have a meaningful role in the shaping of consciences capable of operating amid the ambiguities of present-day political life.

II. THE "JUST WAR," CONSCIENCE AND CIVIL AUTHORITY

In the popular mind the Christian attitude toward war has been seen in terms of a simple bipolarity: pacifist and non-pacifist. Although pacifism is usually associated with the sectarian phenomenon, it is also found within "mainstream" or "catholic" Christianity. It even became institutionalized within Medieval Catholicism where the world-denying religious orders were obligated to follow the "counsels" of Christ while the laity were bound only by the "precepts" of natural law. The former, like the pacifist and world-denying sectarians, took the dominical admonition not to resist evil as an absolute norm; the latter, who were considered to possess a smaller measure of grace, were permitted to kill in the name of civil authority, whether as soldiers, peace officers, or executioners.

Luther and Holy Secularity

Luther was the first of the Protestant Reformers to strike a blow at the Medieval system of religion with its two classes of Christians. His demolition ball was the free grace of God in Christ which reduced the Medieval edifice to dust and placed all believers on the same level before God: equally forgiven, equally free, equally empowered to serve their neighbors in the world. For Luther the tasks of the magistrate, executioner, peace officer, or soldier were not "dirty work" to be performed by a lesser class of Christians. These tasks were rather to be esteemed as a part of God's creating and preserving work. Christians were bidden to welcome the op-

portunity to serve their neighbors and God in these necessary and worthy capacities, as well as to honor and cooperate with all other bearers of secular office.

On the other hand, what had been for the Medieval church counsels of perfection binding only upon the sacerdotal and monastic class, Luther saw as binding upon every Christian—in his private life *qua* Christian. When his own interests alone were at stake, a Christian was to “turn the other cheek.” For the sake of his neighbor, however, the Christian was considered free to resist evil so long as he was careful to do so in terms of the divinely-ordained structures of civil order. It was for his neighbor and not for himself that the Christian soldier, peace officer, or executioner was prepared to take life.

Luther was a realist. He recognized that the world is violent because it is sinful, and he saw no way of restraining violence except through civil governments possessed of sufficient might, together with the will to use that might, so as to render all other violence an unprofitable enterprise. On the other hand, Luther did not, as did Machiavelli, consider civil authority to be above the law. The state is God’s servant (Rom. 13) for the sake of man; and, as a corollary, the state is subject to the divine law. To function authentically, civil authority must be characterized not by the arbitrary use of power but by the restrained and judicious use of power. Luther called for government that was both mighty and restrained, both powerful and prudent.

These things having been noted, the question is rightly asked: By what means is one to evaluate given situations in secular life in order to act in ways that are consonant with the divine purpose of creation and preservation? How is one to know that his support of a particular policy, strategy or tactic is contributory to the establishment of peace, order and justice?

From what has been said previously, it may be concluded

that, for Lutherans at least, there are no ready answers to questions of an ethical-political character. There are no immutable truths—whether as Dominical mandates or general principles having independent existence—which, when applied to particular situations, automatically reveal the extent to which the actions or policies in question conform to the purposes of God. Such a procedure is rendered impossible by the uniqueness of historical moments (however continuous with the past they may otherwise appear to be) and by the sinful nature of man which is forever looking for a command or a principle behind which to hide.

Instead of a set of norms to be applied legalistically, what is called for is a method of ethical evaluation which takes account of both a situation’s uniqueness and its similarity to other situations, a method which uses ethical norms but not in a rigid fashion. Insofar as it concentrates on the particular case, viewing it in the light of past history and those applicable norms which themselves have been sharpened by historical experience, such a procedure may be termed a non-legalistic casuistry. Ethical inquiry of this sort must be undertaken within the context of a dialogue among varying points of view, a situation which affords a degree of correction and qualification to ethical conclusions.

This point has to be stressed especially in connection with the question of war. The war in Vietnam seems to be driving some persons in search of a set of criteria which, in terms of the ethical method here proposed, are disallowed. To view the criteria which are the precipitate of the just war tradition as ready norms by which to judge a present military conflict is to be untrue to that tradition and politically naive as well.

If it is anything, the theory of the just war is not a set of immutable truths. Rather, it is the result of a long history of ethical inquiry, a history which has not yet ended. The criteria which it has evolved are of significance because they

provide a frame of reference within which to ask and answer the question: Is a particular war justified as a means of establishing order, peace, freedom and justice?

An affirmative answer to that question does not render a war any the less tragic, nor does it remove the burden of guilt from those who must kill and destroy. War, though it may be justifiable, is never "just" or "righteous." On the other hand, a negative answer does not afford the giver of that answer the luxury of withdrawing from the society waging such an unjust war. There remains the political task of stopping or at least diminishing the injustice of such a war, as well as the spiritual task of bearing one's own share of the corporate guilt.

It is upon this basis that the following discussion will seek: (1) to set forth the chief elements of the just war theory, illustrating them with reference to the writings of Luther; (2) to consider the questioning of the theory in the face of modern political thought; and (3) to discuss the theory's present and future viability.

The Theory of the "Just War"

Luther's doctrine of civil authority is clearly reflected in his attitude toward warfare: War is a terrible but necessary instrument in a violent world. It is to be used only as a last resort, but when it is used it must be used decisively.

The motif of judicious restraint recurs again and again within Luther's writings on war. In his opposition to the mounting of a holy crusade against the Turk (the modern equivalent would be ideological warfare between West and East) and his denunciation of the ferocity with which the peasants' uprising was quelled illustrate Luther's abhorrence of what latter-day "civilized" men came to know as "total war." Had he foreseen the religious wars which were to ravage Europe in the seventeenth century, Luther doubtless would have been sickened and dismayed.

In all this Luther was clearly heir to what is commonly known as the theory of the "just war." While Augustine is generally credited with coining the idea, the "just war" theory underwent considerable elaboration and refinement during the centuries that followed and did not encounter serious questioning until the advent of *Realpolitik* (Machiavelli, Hobbes). In briefest terms, the theory consists of the following chief elements:

(1) *The requirement that war be a last resort to be used only after all other means have been exhausted.* In his treatise, *Whether Soldiers, Too, Can Be Saved* (1526), Luther advises that nations should engage in war only when war is actually forced upon them, after forbearance, negotiation, and arbitration have yielded in nothing.

(2) *The requirement that war be clearly an act of defense against unjust demands backed by the threat of force.* Luther held that, should a war with the Turk become necessary, it would be because the Turk was behaving like "a pirate or highwayman." "The emperor," he wrote in his treatise, *On War Against the Turk* (1529) "should seek nothing else than simply to perform the work and duty of his office, which is to protect his subjects."¹ War waged with the Turk for any other reason, i.e. a holy war or a war of self-aggrandizement, would clearly be contrary to human justice and the law of God.

(3) *The requirement that war be openly and legally declared by properly constituted government.* In discussing the possibility of war with the Turk, Luther said: "If

¹Martin Luther, "On War Against the Turk." *Luther's Works*. (American Ed.) Vol. 46, p. 185.

there is to be a war against the Turk, it should be fought at the emperor's command, under his banner, and in his name. Then everyone can be sure in his conscience that he is obeying the ordinance of God, since we know that the emperor is our true overlord."² Under this requirement wars entered upon as a result of a ruler's caprice, and undeclared wars waged at the cheapest political cost are clearly disallowed.

(4) *The requirement that there be a reasonable prospect for victory.* "My advice," said Luther, "is that we not insufficiently arm ourselves and send our poor Germans off to be slaughtered. If we are not going to make an adequate, honest resistance that will have some reserve power, it would be far better not to begin." Suicide is contrary to the law of God, whether it be the suicide of an individual or of a nation. Wars of mutual annihilation are condemned under this requirement.³

(5) *The requirement that the means be proportionate to the ends.* Luther held war to be a necessary evil employed in extreme situations in order to restore order, equilibrium, justice and peace. If, however, a war becomes destructive of those ends which it was meant to achieve, it is clearly unjust. Under this requirement wars which decimate population, drain resources, destroy the dignity of a nation, and generally eliminate the conditions of meaningful human existence are clearly contrary to the law of God.

(6) *The requirement that a war be waged in such a way as to distinguish between combatants and noncombatants.* As has been noted, Luther vehemently opposed the kind

of wholesale carnage that is now known as "total war." Obliteration bombing, scorched earth policies, and the deception of counting a civilian as the enemy after he has been shot are condemned by this requirement.

(7) *The requirement that the victorious nation not require the utter humiliation of the vanquished.* Luther, too, insisted that the vanquished be treated with mercy, that they be assisted in rebuilding the destruction wrought by war. Punitive reparations, and the concept of unconditional surrender are disallowed by this requirement.

This brief summary of the essential points of the "just war" theory needs, finally, to be seen in terms of two qualifiers. In the first place, the theory provides a minimal set of criteria for the judging of particular wars. These criteria, because of their rationally formal character, have an obvious limitation in regard to a phenomenon which is at bottom irrational and has become increasingly so since the dawn of the modern period.

In the second place, the "just war" theory is predicated upon the Aristotelian assumption that ethics and politics are inseparable. In more theological terms, it is based upon the assertion that civil authority is subject to the divine law, and that the state, under God, exists for man, not man for the state. The theory thus shows itself to be the product of the *Corpus Christianum* and, therefore, to be based on assumptions which, in an age that is both post-Machiavelli and post-Hiroshima, are widely rejected.

The Just War Theory and the Present Situation

The ethos out of which the theory of the just war grew—the Medieval synthesis of biblical and classical thought—began to crumble at the time of the Renaissance and the Reformation. The rise of nationalism and capitalism

²*Ibid.*

³*Ibid.*, p. 201.

became the occasion for a radical rethinking of the nature of man and the character of politics. Machiavelli and Hobbes made a clean break with the tradition of Aristotle, Augustine and Aquinas. In their political thought they set out to describe man not as he is meant to become (the teleological view of the Aristotelian tradition) but of man as he is. Politics became disassociated from ethics, prudence from justice. The work of the politician was seen as nothing more or less than the securing and keeping of power.

Since, on this view, man is by nature predatory on his fellow men—Hobbes described the “state of nature” as a war of all against all—there can be no law and no justice unless there is first a government powerful enough to maintain order by threat of superior force. Justice is therefore the creature of government, not government of justice. Government is subject to no law except the “law” of its own self-preservation. Individual men have no reason to expect more of government than the maintenance of civil order, and they are in no position to complain if the official definition of justice differs from their own.

Hobbes taught that in the absence of such government man is under no obligation to anyone but himself. In fact, it was part of Hobbes’ first law of nature that, in such a situation, man is bound to seek every means of arming himself against his fellows.

It is essentially this viewpoint which underlies what has come to be known as international power politics. There being no world government, individual nations exist in a Hobbesian state of nature, a war of all against all. This does not imply universal armed conflict; what it does imply is a situation of mutual suspicion, hostility, “cold war,” which from time to time erupts in violent conflict. Nations are, therefore, under obligation to seek every means of arming themselves against each other and when violence breaks out, of using every means to achieve victory.

If politics is so reduced to an equation of power, if prudence is in all cases to have primacy over justice, the theory of the just war seems clearly irrelevant. In the “game of power” the only morality consists in maintaining and extending one’s power. Considerations other than those of power are immoral *per se* because they divert attention from the real issues. Such diversion can, it is argued, be disastrous. Therefore, he who is most concerned about life and justice ought for that very reason to refrain from judging power in moralistic terms. Power understands only power, and in the game of power he who would be most moral may have at times to appear least so.

There can be no denying the large amount of truth contained in this point of view, truth that has been readily recognized by some theologians as illustrative of the biblical understanding of fallen man. It was this kind of “realism” which such men as Reinhold Niebuhr and John C. Bennett brought as a corrective to the moralism and political ineptitude of the Social Gospel by pointing out that Nazism must be stopped by force, not pacifist sentiment.

Yet the question remains: Is the theory of the just war rendered completely beside the point by the kind of realism just described? Is the critical evaluation of policy within criteria such as those provided by the just war theory purely an exercise in irrelevancy, perhaps even *immoral* irrelevancy? Or is it possible that, in the present age of possible mutual annihilation, man may discover that politics and ethics, prudence and justice are perhaps not so alien to one another as might once have been supposed?

The Just War Revisited

While it might be expected that the hard truth of the political realists would have forced the final retirement of the constellation of ideas associated with the just war theory, the

fact is that a growing number of sensitive and competent observers are reaching out for something more to guide politics besides simple considerations of power. Having taken with utter seriousness the arguments of the "realists," they are, by various paths, searching for what might best be termed a chastened rationality. This group includes theologians (such as the above-mentioned Niebuhr and Bennett), practicing politicians (such as Eugene McCarthy and J. William Fulbright), historians (such as Arthur Schlesinger, Jr.) and countless others whose fields, whether practical or academic, touch directly upon the question of war and justice.

Their position consists of two chief ingredients. In the first place, they hold that, however necessary the chastening of "realism" may have been, such a viewpoint by itself presents only a truncated doctrine of man. In spite of his corruption, man is still capable of certain rationality, of prudential reflection before and after his actions. He is an historical being and is therefore capable to some degree of profiting by past experience. To reduce him to a simple manager (or mismanager) of crises is to ignore an essential aspect of his humanity. To deny man's capacity to discover and execute approximations of justice (from motives which, to be sure, may be ultimately self-serving and self-preserving) is to adopt a wholly unwarranted pessimism. Ethical ideals may often be employed as political slogans; yet neither history nor the nature of man permits their being dismissed as good for nothing else.

The second conviction is this: The presence of so many nightmarish ways of destroying meaningful human existence many times over, the frenzied proliferation of the same, and the accelerated development of new and more sophisticated weapons, leads to the practical conclusion that, unless some sort of rational justice is again grasped by the wielders of world power, "realism" based solely upon power considerations will lead all the world to its doom. The threat of

annihilation may well be forcing a "shotgun wedding" between those erstwhile married-and-divorced partners, morality and politics.

It is from such a standpoint that many questions are being raised about wars which, like the one in Vietnam, appear to be exercises in bad crisis management, in their goals unclear, in their tactics questionable. The persons raising these questions are not moral purists indulging in the luxury of self-purgation. Theirs is not an hysterical scream but a quiet questioning in the name of morality and prudence. Their intention is not to wish away reality but, insofar as possible, to re-shape it.

To varying degrees the persons belonging to this group share the following beliefs:

(1) The continuing anarchic state of international affairs demands that the possessors of power act responsibly in using—and in refraining from using—their might. Dangerous as the presence of thermonuclear weapons may be, the "balance of terror" cannot be wished away and, indeed, may be the means of buying time for the development of more adequate structures of world order. Policies which, because of their provocative nature, tend to upset the balance need to be resisted.

(2) Most dangerous of all threats to this balance is the Manichean mythology of the Cold War. To reduce all matters of international politics to a cosmic struggle between The Children of Light and The Children of Darkness is to create and sustain pressures which may cause prudence and restraint to give way to hysterical over-reaction. This is especially the case in "limited" wars: To characterize the action in a "limited" war as "resisting communist aggression" tends (a) to create in fact the aggressor which had been imagined in fancy by driving into closer alliance nations (the U.S.S.R. and China,

China and North Vietnam) whose historic attitude toward each other has been cool-to-hostile; and (b) to create within the American public a political climate unfriendly to flexibility and hospitable only to the most simplistic of solutions, total military victory. Manichean mythology can only force small wars to become large ones, and large wars to become suicidal holocausts.

(3) Undeclared wars fought at the cheapest political cost are clearly unjust and ultimately self-defeating. They exact the greatest price from the civilian inhabitants of the land on which they are fought because they employ the least costly means from the political standpoint—massive firepower—rather than the immense commitment of personnel required to take and permanently to secure an area. These wars proceed on the theory of the “quotient of pain” used to justify gradual escalation of bombing and shelling. Such a theory has a certain appeal in terms of domestic politics, but it is extravagant beyond words for both the country taking the punishment and the country giving it. Finally, such wars drain away the resolve and imagination of the great power as far as the alleviation of deprivation at home and abroad is concerned. It is ultimately the poor who pay.

It cannot be denied that the critics who advance this viewpoint press it with a great deal of moral urgency. What distinguishes them from some other protesters is the practical, and therefore the political character of their urgency. They are under no compulsion to purify either themselves or the world. Their concern is for preservation, not salvation; it is temporal, not eschatological.

Virtue as Necessity

It is doubtless true, as argued by the “realists,” that to exhort power on its moral obligations, whether “under God” or

simply for the sake of man, is an exercise in stupidity. Such naive activity on the part of the church can result only in a further erosion of the church’s credibility. “Boy Scouts” are decidedly unwelcome in the game of politics, especially those who wear clerical collars.

What is becoming increasingly clear, however, is the realization that many questions once relegated to the category of “mere moralism” are actually of central relevance to the over-arching issue of the survival of man. The world is no longer a place in which power may disregard the fury of men unjustly dealt with. Such disregard is a luxury the price of which is too dear if mankind as a whole expects long to remain upon this planet. The truly human questions—survival, coexistence, co-operation, justice, the overall quality of life—must now be faced by politicians with a depth and intensity which has been all too lacking among the wielders of power. These questions must, in fact, become the very *stuff* of politics and not simply the convenient content of political rhetoric.

It appears, then, that sensitive men of goodwill within and without the church must make a greater effort in the forging of a reunion between ethics and politics. The lessons of the recent past will allow no uncritical return to a simple rationalism; neither will they permit any equally uncritical acceptance of *Realpolitik* with all its demonic proclivities (Rev. 13). Unless the task is addressed with a vigor and imagination commensurate with that going into the development of war machinery, man may quickly find himself beyond all hope.

III. THE SELECTIVE OBJECTOR

The presence and proliferation of weapons of mass destruction, the escalation of the war in Vietnam, and the live possibility of similar wars elsewhere, have caused a significant breakdown of the nonpacifist-pacifist bipolarity which over the centuries has characterized the attitude of Christianity toward war. Alongside the "classic" pacifist whose objection to military participation has the status of an "article of faith," there is emerging a new breed of pacifist whose conviction springs from his observation and judgment of the present world situation. Such a pacifist does not assert that warfare has always and everywhere been morally wrong; rather, he asserts that, given the horrors of recent wars and the possibility of still greater ones, no responsible, humane person can now either approve or participate in war.

In addition to this new breed of pacifist, there are also appearing in increasing numbers what are variously characterized as "selective conscientious objectors" or "particular war objectors." An early manifestation of such selective objection in the years following World War II was the so-called nuclear pacifist, the person morally opposed to any war in which nuclear weapons might be used. Many who once held such a viewpoint have now moved to the point of objecting to wars on the basis of criteria broader than simply the use of nuclear devices. It is doubtless true that some of these persons are in fact *en route* to the new kind of pacifism just described.

Although the question of selective objection has come to the fore with great urgency because of the war in Vietnam, it

was under serious discussion much earlier. In 1960 for instance William H. Lazareth wrote the following words:

To recall some of Luther's sixteenth century limits on a "just war," loyal soldiers are now expected—in the line of duty—to employ nuclear weapons, incendiary bombing and radioactive fallout to help "rape" and "violate" not merely individual wives and virgins, but whole cities full of helpless civilian victims of both present and future generations.¹

And in 1961 Paul Ramsey asserted that the church must at long last

make the decision to support its members who refuse to fight because they believe a particular war to be unjust with the same vigor with which it has in recent years supported the pacifist witness within its ranks and within the nation. This would mean that the church will consciously attempt to obtain in military draft laws some status for those who refuse to fight unjustly as well as those who have conscientious objection to all war. . . . If the decision is reached that the church's doctrine of just and limited war [is addressed only to magistrates or to topmost political leaders and military commanders, and] is not addressed to private citizens and soldiers, then, if also penance is good for anything, consideration should be given to reviving the requirement of forty days' penance following participation in any war.²

Both the new breed of pacifist and the selective objector share these basic beliefs: (1) God (for the non-theist, read, "humane conscience") requires the individual to judge the morality of whatever policy of government he may be under orders to implement and, where such a policy is clearly unjust, to refuse to obey; and (2) in making such judgments it is clearly impossible to separate ethical/religious judgment from political judgment.

¹William H. Lazareth, *A Theology of Politics*, p. 25.

²Paul Ramsey, *War and the Christian Conscience* (Duke University Press, 1961), pp. 128-29, 132-33. Quoted by Ramsey in "Discretionary Armed Services," *Worldview*, February, 1967.

In connection with the first of the above-described beliefs, it is asserted that the principles underlying the judgments at Nuremberg, (namely, that an individual is personally responsible for his actions even when he is acting under orders, and is himself culpable if he obeys what is clearly a command to criminal action) are as applicable to Americans as they were to Germans. In connection with the second belief, they assert that it is unjust that the selective service law should exempt from military duty only those whose objection is clearly based upon "religious training and belief" and couched in terms of total pacifism.

It is of course true that the Supreme Court, in *United States v. Seeger* (1965) eased the situation somewhat for the non-theist pacifist. In that decision the court ruled that the legal requirement that pacifist convictions be based upon belief in a Supreme Being also included "a given belief that is sincere and meaningful [and] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for exemption."³

It should be noted, however, that the court did not rule on the constitutionality of the requirement *as such*, namely, that conscientious objection must be religiously grounded if it is to have legal status. Instead, it confined itself to a broadening of the interpretation of the term, "Supreme Being." Inasmuch as that term has been eliminated altogether in the draft law of 1967, it remains to be seen how non-theist objectors will fare in the near future and whether the requirement of "religious training and belief" will be tested as to its constitutionality.

Obviously, much of the difficulty encountered by selective objectors stems from the fact that the draft law—and a preponderance of public opinion of which the law is a reflec-

³*In Pursuit of Equity: Who Serves When Not All Serve?* Report of the National Advisory Committee on Selective Service, p. 48.

tion—tends to pit ethics/religion and politics against each other. By way of contrast, selective objectors hold the two to be inseparable in practice, however distinguishable they may be in thought. Because of their insistence that ethical choice be made in terms of specific circumstances, selective objectors almost invariably state their case in terms having a high political content. To the draft board, accustomed as it is to hear objectors speak in language of a more pious or metaphysical character, the political language of the selective objector evokes responses running the gamut from confusion to hostility, with most responses tending toward the latter.

There appear to be two main questions which the issue of selective objection poses for the church:

1. Should the church seek to influence a change in public policy on conscientious objection so as to give legal status to the selective objector? If so, what sort of policy should be sought?
2. How ought the church deal with its own members who are selective objectors?

Selective Objection and Public Policy

There is no more complete a summation of the proposals being made by advocates of change in the selective service law in favor of the selective objector than that contained in the report of the National Advisory Commission on Selective Service (the Marshall Commission). Although it did not endorse legal recognition for selective objection, the commission gave a fair representation of it in its final report. Because of its lucid statement, the report is here quoted at some length:

The Commission also considered the substantive issue raised by the statute in its requirement that objection, in order to gain legal recognition, must be against war in all forms. Two proposals were made by Commission members.

The first proposal was that the statute be amended to eliminate

the requirement that conscientious objection be lodged against war in all forms. Those who argued this proposal made these assertions:

(1) The present statute incorporates the moral position of absolute pacifism, which holds that all uses of military force are inherently immoral. Although this moral view of war has occupied a time-honored place in American society, it is a sectarian position and does not represent the moral consensus of the American people with regard to the uses of military force. Hence, though this moral view should continue to be honored in a revised Selective Service Act, it should not be accorded its present place of privilege as the legal doctrine which alone controls the issue of conscientious objection.

(2) The classical doctrine on war widely held within the Christian community has been based on the moral premise that not all uses of military force are inherently immoral. The morality of war is indeed no more than a marginal morality, in view of the destruction, suffering, and death that war always entails. Nevertheless, the tradition has maintained that certain uses of force for certain circumstances can be morally justified. In a word, a war may be just; it may also be unjust.

(3) Although the decision to make war is the prerogative of duly constituted government, responsible to its people, and constitutes a presumption for the citizen in favor of the legitimacy of the war, the citizen still is personally responsible for his own moral judgments on matters of public policy. He may not abdicate his own conscience into the hands of government. In making his moral judgment on the legitimacy of war he must assess the political and military factors in the case, but the judgment itself is to be a moral judgment. In particular cases, therefore, it can happen that the conscientious moral judgment of the citizen is in conflict with the judgments made by government, either with regard to the justice of the nation's cause or with regard to the measure and mode in which military force is to be employed in the defense of the nation's vital interests. In such cases the citizen should not be compelled by government to act against his conscience by being forced to bear arms. Government, however, may

legitimately require of the citizen some manner of alternative service, either in a non-combatant or in a civilian capacity, as a duty of citizenship.

The proposal, therefore, was that the statute be so amended as to reckon with, and incorporate, this doctrine on the uses of force.

The proposal had two other features. First, the objector should be obliged to state his case before a competent panel. The purpose would be not to judge whether he was right in his assessment of the political, military, and moral values in the situation, but simply to convince his judges that his objection was "truly held," in the words of the Seeger decision. The hope was advanced that in this fashion the level of moral discourse on the uses of force would be lifted. Young men would be required to reflect on the issues of war and peace, under the guidance of their mentors, and thus enabled properly to form their conscience at an early age. The second feature was that the present statutory requirement of alternative civilian service should continue to be stringently enforced.

The second proposal made to the Commission was somewhat more narrow in scope. It rested on a twofold premise. First, public recognition should be given to the fact that there may be moral validity to the conscientious objection to particular wars. Second, measures should be taken to make an effective distinction between two groups presently existent within the student community. There are responsible students who feel themselves caught in a dilemma, namely, between their duty to their country and what they see as the exigencies of personal integrity and conscience. This group deserves serious consideration. There is also the handful of irresponsible individuals whose opposition to particular wars is simply part of a broader revolt against organized society. This group should be deprived of an issue which gives them an opportunity of seeming to represent all opposition.

On these premises the proposal was twofold. First, the provisions of the present law should be retained for the absolute pacifist. Second, those whose objection is not against war in all forms, but against a particular conflict, should be given a more narrow option. They should be excused from combatant service,

but they should be required to serve in a noncombatant military capacity, under conditions of hardship and even of hazard, and perhaps for a longer period (for example, 3 years). This latter option should be liberally conceded to those who elect it, but without the requirement that they show affirmative proof that their objection to combatant service is on properly moral grounds.⁴

Although the Marshall Commission apparently gave serious consideration to the position of selective objection, its majority "voted to retain the present requirement of the statute, that conscientious objection must be based on moral opposition to war in all forms." In support of its conclusion the Commission adduced these reasons:

1. An allegedly wide variety of interpretations of the just war doctrine, a variety which rendered the subject beyond the competence of the Commission.
2. The contention that "so-called selective pacifism is essentially a political question" and that, therefore, persons holding such a position are no more entitled to exemption from their legal obligations than those who are politically opposed to any other public policy.
3. The conviction that "legal recognition of selective pacifism would open the door to a general theory of selective disobedience to law."
4. The inconsistency in permitting "selective pacifists" to perform noncombatant service in a war they had concluded to be unjust.
5. The belief that such legal recognition "could be disruptive of the morale and effectiveness of the Armed Forces" and that requiring the individual to judge the morality of a particular war "could put a burden heretofore unknown on the man in uniform and even on the brink of combat, with results that

⁴*Ibid.*, pp. 48-50.

could well be disastrous to him, to his unit and to the entire military tradition."⁵

The decision of the Commission, therefore, seems to have been based on two main elements: the conviction that providing exemption only for ideological pacifists is neater from a legal standpoint, less fraught with unmanageable administrative and legal ramifications; and the fear that recognition of the selective objector could lead to a general breakdown in both civil obedience and military discipline.

The Prudential Basis for Exemption

In the matter of legal exemption for the conscientious objector, Lutheran teaching requires that two basic assertions be made: (1) the individual may indeed find that it is his duty conscientiously to disobey a law, but⁵ he cannot consider such disobedience to be a *right* to be guaranteed him by the state. Conscientious objection to compulsory military service cannot, therefore, be considered a basic constitutional right which the state is required to protect any more than conscientious noncompliance with any law can be so interpreted. *Legal status for the conscientious objector is rather a privilege which a state may or may not grant, depending upon the extent to which that state's viability is or is not threatened by other circumstances.*

If a government accords legal recognition to a conscientious objector, therefore, it does so, not as a matter of obligation, but as a matter of prudence. It reasons in this fashion: In a nation which is not seriously threatened by pressures which could undermine its stability, and where the number of objectors to a given law is relatively small, it is better policy to accord legal status for such objectors and to provide them alternative service opportunities because men

who are permitted to act freely according to conscience are usually more loyal and more productive citizens than are those who are forced to act against their conscience. An AID worker with a good conscience is an asset to the state; an imprisoned alienated citizen is a liability. It was on such a basis of prudence that Congress first made provision for the exemption of religious pacifists from compulsory military service. It is on such a basis, also, that many advocates of selective objection are seeking a broadening of the law. Put most briefly (using the formulation of Albert Camus), it is in the better interest of the United States to provide an opportunity for men to love *both* justice *and* their country.

In reply to those who insist that such a change in the draft law would encourage agitation for legal exemption to any law considered by some too burdensome and unjust it is asserted that in the conformism which dominates the American ethos (certain reports of the mass media notwithstanding) there is little chance of such a trend. Far greater, they argue, is the threat to the tone of American society if the selective objector is offered the harsh choice between prison with a free conscience and military service with a bad conscience.

To those who cite the stresses which confront America as sufficient reason for disallowing legal status for the selective objector, it is pointed out that even at the time of the blitz Britain did not abandon her legal provision for selective objectors. Nor was there undue strain in implementing the provision. In April, 1966, Lord Brockway wrote to the New York Times that little or no difficulty was encountered by the tribunals established in wartime Britain for the purpose of judging the sincerity of selective objectors.⁶ In the British experience there was no apparent sign of breakdown in either civil obedience or military discipline.

⁵*Ibid.*, pp. 50-51.

⁶As quoted by Roger Shinn, *Christianity and Crisis*, April 3, 1967.

Because of their balancing the duty of the individual to obey his conscience and the rights of civil and military authority, Lutherans tend not to follow those who insist that the military should provide exemption for any who in conscience choose to disobey an order. Indeed, a Lutheran understanding would underscore the near impossibility of such disobedience under certain conditions. In a recent discussion of the issue, one Lutheran lay leader, himself a war veteran, made this statement:

On the field of battle, the security of the military unit to which a man belongs may require obedience to orders which are in conflict with the overall demands of conscience. In such a situation the man of conscience is bound to weigh the morality of the orders he receives in the context of the situation he faces. Neither time nor circumstances will, in such situations, permit the man of conscience to take counsel with other Christians concerning ethical responsibility in the face of the conflicting claims on him. Neither can any advice be given in advance of such a situation. All that we can do is to urge the man of conscience to "sin boldly" but to believe even more strongly in the forgiving grace of God.

The Church and the Draft Law

In the previous chapter it was stated that Luther argued the principle that good government is characterized primarily by the restrained use of power. The following quotations are particularly illustrative:

... a prince must have the law as firmly in hand as the sword, and determine in his own mind when and where the law is to be applied strictly or with moderation, so that the law may prevail at all times and in all cases, and reason may be the highest law and the master of all administration of law.⁷

⁷Martin Luther. "Temporal Authority: To What Extent It Should Be Obeyed." *Luther's Works. American Edition*. Vol. 45, p. 119.

... to punish little is more tolerable, for it is always better to let a scoundrel live than to put a godly man to death. The world has plenty of scoundrels anyway, and must continue to have them, but godly men are scarce.⁸

It would seem clear that, when they argue for the broadening of the provision for conscientious objection on the basis of prudence and the restrained exercise of authority, Lutherans are on firm theological ground.

However divided opinion within the church may continue to be on the changes being called for, there is one matter on which there seems to be no room for honest disagreement: the use of military service itself as a punishment for non-compliance with the present law. Opposition to such a policy bases itself upon two principles central to the historic Lutheran teaching regarding civil authority: (1) the above-mentioned principle of restraint and (2) the sacredness of secular office.

The first principle is violated in the vindictive effort of draft boards and the Selective Service System to circumvent the courts. The second is violated in that the "office" of the soldier is demeaned by its being used as a punishment. Whatever its internal disagreement on related issues, the church ought to be clear in its opposition to this policy which Luther would doubtless characterize as a counsel of fools.

The Selective Objector in the Church

It is ironic that, possessed of so immense a literature on the doctrine of the just war, the non-pacifist churches have done so little in the way of guiding and supporting the consciences of Christians who are troubled about participation in particular wars. Even Luther, himself not a noted counsellor of civil disobedience, could write:

⁸*Ibid.*, p. 105.

If you know for sure that [your prince] is wrong, then you should fear God rather than men, Acts 4 (5:29), and you should neither fight nor serve, for you cannot have a good conscience before God.⁹

Yet the non-pacifist churches in America have done very little either to assist their members in evaluating political issues so as to "know" whether or not the government is pursuing a right policy; nor have they done anything significant in helping those of their members who, having by themselves or with other help examined the issues, have concluded that they can neither support nor participate in a particular war. On the other hand, the non-pacifist churches have taken care to support the consciences of their pacifist members.

The closest U.S. Lutheranism came to supporting selective objection was in a convention statement adopted by the United Lutheran Church in America in 1940, on the eve of U.S. entrance into World War II. The church began by clearly enunciating the Confessional basis for Christian participation in secular functions, including military service, with an extended quotation from the key portion of the Augsburg Confession, Article XVI. From this starting point it went on to assert: "We hold not only that a justifiable war may be possible, but that the Christian citizen is in duty bound to bear arms and to offer his life if need be in defense of his country."

Having made these positive assertions regarding Christian secular participation and the possibility of a just war, the church turned to the matter of conscientious objection:

We believe that the conscience of the individual, informed and inspired by the Word of God, is the final authority in determining conduct. Acts. 5:29. Conscientiousness is one of the essential virtues of good citizenship. Therefore, under this evangelical

principle of freedom of conscience we recognize the individual right to conscientious objection to service in a war. Such recognition does not imply the Church's approval of such conscientious objection but does proclaim its devotion and respect for the Scriptural principle of the supreme moral responsibility of the individual conscience. Acts 5:29. As the exponent and defender of Christian principle the Church must respect and safeguard the right of the Christian in his exercise of that responsibility. The obvious difficulties involved, such as the abuse of the principle by hypocrites using conscience as a cloak for cowardice, do not excuse the Church from its sacred obligation of defending the principle at stake. They do challenge the Church to special care in judging the spirit and motives of those who may call upon the Church for safeguarding in such a position. They also challenge all Christians to a heart-searching study of what the Word of God and the witness of the Church teach concerning the duties of the Christian citizen to the State. We reiterate that duty to be loyal support and service to the nation whose protection and benefits he enjoys.¹⁰

This statement in fact contains all of the basic elements in selective objection: (1) a positive attitude toward the bearing of secular office and obedience to secular authority; (2) a strong affirmation that "conscientiousness" has constructive value to the secular order, being "one of the essential virtues of good citizenship;" and (3) the recognition of "the individual right to conscientious objection to service in a war." It is noteworthy that, whether by design or not, the church spoke of "conscientious objection to service in a war," and not to war in general. Thus the statement was consistent throughout with the "just war" tradition and, consequently, with the tradition of Luther and the Confessions.

In the years that followed World War II the United Lutheran Church continued to sound a clearly Lutheran

⁹"Whether Soldiers, Too, Can Be Saved," *Op. cit.*, Vol. 46, p. 130.

¹⁰*Social Statements of The United Lutheran Church in America, 1918-1962.* p. 49f.

note on the issue of war and peace. In 1948, for instance, the church spoke out against a "preventive" war with Communism in a fashion reminiscent of Luther's treatise on a possible holy war against the Turk. The basic differences between Western democracy and Communism "need not result in war, and in fact cannot be resolved by war. Communism has only gained its chance in Russia and Central Europe through the chaos and impoverishment resulting from two world wars. A third world war, even if waged to prevent the spread of Communism, would almost certainly result in the loss of our own democratic freedom, and in the disruption and anarchy on which Communism grows." The church called upon its members to "challenge the judgment of those who say 'war is inevitable,' and those who urge a 'preventive war' with Russia."¹¹

In contrast to the Peace Churches, Lutheranism in America has generally held a "realistic" attitude toward force and the threat of force as an inescapable feature of a sinful world. With equal charity they have insisted that certain kinds of force, even when directed toward just and honorable ends, are in themselves unjust and destructive of the ends for whose achievement they may be employed. In 1960 the ULCA said:

We recognize that armaments are today a basic element in international diplomacy. Their possession in peace may serve to deter aggression. Their use in war for purposes of defense may be justified as a necessary evil in a sinful world. Under no circumstances can aggressive or preventive wars be sanctioned. Armaments, both their possession and use, have always been fraught with hazards, but they have now reached a destructive capacity which, if fully utilized, could engulf the nations in a holocaust of mutual annihilation. We are therefore convinced that the decision to have recourse to arms must be determined by the extent to

which justice and freedom may be advanced. No nation is justified in the use of weapons of such magnitude as would result in the total destruction of human life. At the same time we recognize that the dilemma posed by the availability of these weapons can be resolved in abstraction only at grave risk. We are persuaded that this dilemma will remain a burden of mankind through the foreseeable future and that decisions must be made humbly and responsibly as each new situation arises. The dangers inherent in the nuclear-space age will be decreased in proportion to the effectiveness of agreements for the cessation of nuclear weapons testing and the reduction of national armaments under international inspection and control.¹²

However true to their tradition the Lutheran churches in America have been in the matter of the just war, they have been less consistent on the issue of conscientious objection. That this situation was largely due to external circumstances—the fact that Lutherans were just emerging from the status of an ethnic minority and the insecurity felt by many Lutherans of German extraction during World War II—is no doubt true. No small contributor was the government itself whose policy protected religious objectors who were pacifists but not those who might base their opposition on more restricted or discriminating bases. Lutheranism thus opted to support the convictions of its pacifist members, but it made no effort to assist objectors of a more traditionally Lutheran character.

Many persons within the non-pacifist churches were at that time choosing what has been called "vocational pacifism." While having no illusions about the realities of power and force, they sought, in the words of Tillich, to "try symbolically to represent the 'Peace of The Kingdom of God.'" ¹³ It was widely felt that the non-pacifist churches ought to sup-

¹¹*Ibid.*, p. 69f.

¹²*Ibid.*, pp. 71-73.

¹³Paul Tillich. *Systematic Theology III*, p. 388.

port such a witness. While this undoubtedly represented a forward step, the matter of selective objection still remained to be faced.

With the formation in 1962 of the Lutheran Church in America, there was need for the enunciation of a policy on conscientious objection. In an essentially "stop-gap" resolution designed to continue the support given to conscientious objectors by church bodies which merged to form the LCA, the church's Executive Council sought in 1964 to provide for the pastoral support of persons who considered themselves "called to bear witness for peace through conscientious objection to military service." While this statement has served the provisional purpose for which it was designed, it has added nothing that is uniquely Lutheran to the discussion of conscientious objection and, if anything, has muddied the waters still further.

Meanwhile, the selective objector finds himself in an ethical and a legal no-man's land. Government policy has in effect been baptized by the official Lutheran community, and, except in a few unusual cases, selective objectors must look outside the church for guidance and support.

The Pastoral Function

The time is ripe for the church to move toward a correction of its past disregard for the non-pacifist objectors within its membership, as well as to assist all its people in the formulation of clearer judgments in political matters. Preliminary steps toward these ends should include at least the following:

(1) *A more deliberate effort within the church's educational enterprise to foster a maturity which is conducive to free dialogue and responsible judgment on political matters.* Selective conscientious objection implies a high degree of maturity of ethical sensitivity and political understanding.

The church can contribute much to such a maturity if it is willing to do so. This is not to suggest political indoctrination; it is rather to suggest a climate of openness and mutual acceptance in which Christians, with the self-correcting benefit of genuine exchange, may arrive at responsible positions *vis-a-vis* burning public issues.

(2) *Assistance to pastors as they are called upon to counsel persons confronted by the possibility of military conscription.* Because the political ethos of American Lutheranism has been dominated by an attitude of conformist "obedience," without much appreciation for the legacy of the just war doctrine, pastors are generally not very well equipped to assist men in knowing what ethical options are open to them in regard to military service. The non-pacifist-pacifist bipolarity probably dominates most thinking on the subject. The church should, therefore, through the issuance of educational materials and the holding of pastors' conferences, assist its pastors in reclaiming the whole Lutheran heritage as far as war is concerned.

(3) *The taking of a public stand in support of selective objection.* The church should let it be known that, whether or not legal status is accorded to selective objectors, it stands with its non-pacifist members who for reasons of conscience cannot participate in a particular war. This should include both pastoral support of individual objectors and public support of selective objection as such. Such a stand would assure the objector of the church's continuing concern for him and could possibly strengthen his hand in legal proceedings. In addition, it could help to create a political climate conducive to the eventual liberalization of the draft law in favor of selective objection.

There is ultimately no "neat" solution for the question of selective objection. Conflict will persist between dissenters

and civil government. It is for the church not to stifle dissent, but rather to encourage responsible and constructive criticism of public policy. To do so means to take the risk involved in any kind of controversy. It is the church's faith which permits it to take such a risk.

Selective conscientious objection, like any non-compliance with law, must always be considered an act of last resort. Only after he has done all he can do through normal political means to bring about a change in policy can one properly choose such an option. At times "all he can do through normal political means" will admittedly be very little; still that little must be attempted. Selective objection thus becomes continuous with responsible citizenship; and the objector affirms his solidarity with society, whose guilt he also bears, even as he makes his protest against what he believes to be an unconscionable policy.

Not all within the church will agree with those who from time to time find it necessary to confront and to defy a particular policy. No matter how much support he may have, the selective objector to war will find his position to be a lonely one. Yet, having done its best to provide the individual with the maturity for responsible choice, the church must respect and protect the conscience of such an objector, keeping itself open to whatever word of divine judgment his action may embody.

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conscience, **WAR,** and the selective objector

by RICHARD J. NIEBANCK